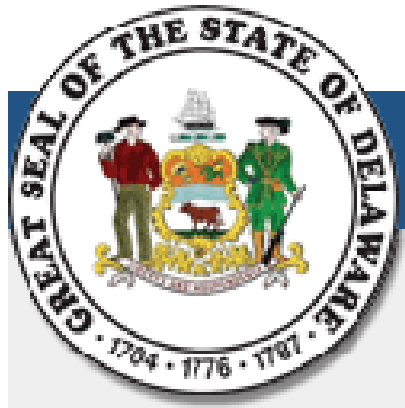


STATE OF DELAWARE



Public Employment Relations Board

DE Public Employment Relations Board
4th Floor, Carvel State Office Bldg, 4th Floor.
820 N. French Street
Wilmington, DE 19801

Request For Proposals for Special Conflict Counsel

Bid Number: 04162009CCPERB

Bid Closing: April 22, 2009; 3:00 p.m. EST

REQUEST FOR PROPOSALS TO PROVIDE SPECIAL CONFLICT COUNSEL ISSUED BY THE PUBLIC EMPLOYMENT RELATIONS BOARD

Executive Summary

The Public Employment Relations Board (“PERB”) seeks a firm interested in providing legal services to fill the role of Special Conflict Counsel (“Conflict Counsel”) in a jurisdictional dispute between the PERB and the Superior Court of the State of Delaware (“Superior Court”) concerning applicability of the Public Employment Relations Act, 19 *Del.C.* Chapter 13, to Delaware Courts.

The PERB administers the public sector collective bargaining laws in the State, and conducts the process by which unions are certified to represent government employees in labor negotiations. State employees’ rights to collectively bargain are controlled by 19 *Del.C.* Chapter 13.

The PERB anticipates that, after conducting interviews, it will select one firm to act on behalf of the PERB as its Conflict Counsel. The PERB reserves the right to award multiple contracts if it determines that such an award is in the best interest of the State.

This RFP will define the scope of the work to be performed, the requirements the vendor (“Vendor”) must address, the method for response, and the administrative requirements that must be followed. The PERB will advise potential Vendors of changes to any dates as may be necessary. The PERB also reserves the right to modify and/or cancel this solicitation at any time during the RFP process.

RFP Schedule

ID	Date/Time	Activity
1	April 16, 2009	Request for Proposal issued, and posted on the Public Employment Relations Board and Attorney General’s websites.
3	April 20, 2009	All Vendor questions regarding RFP are due by 5:00 p.m..
4	April 21, 2009	State issues answers to questions regarding the RFP via Public Employment Relations Board’s website by 3:00 p.m. at http://perb.delaware.gov and Attorney General’s website at http://attorneygeneral.delaware.gov
5	April. 22 2009; 3:00 p.m. EST	RFP Response due date.
4	April 27, 2009	Begin Vendor Interviews (subject to change).
5	May 1, 2009	Begin Negotiations (subject to change).
6	May 5, 2009	Contract awarded (subject to change).

All interested firms should submit an original and 10 bound copies of its proposal ("Proposal") to the contact person. Proposals may be mailed or hand-delivered for receipt no later than 3:00 p.m. EST on April 24, 2009 ("Closing Date"). All timely Proposals become the property of the State. Requests for extensions of the Closing Date will not be granted. Any Proposal, request for modification, or request for withdrawal received after 3:00 p.m. on the Closing Date is late and may not be considered. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), U.S. Mail, or by hand.

Proposals shall be submitted to:

State of Delaware
DE Public Employment Relations Board
ATTN: Deborah L. Murray-Sheppard, Executive Director
4th Floor, Carvel State Office Bldg.
820 N. French Street
Wilmington, DE 19801

Each proposal must be accompanied by a transmittal letter, which briefly summarizes the proposing firm's interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP, which the applicant may have taken in presenting the Proposal. The State reserves the right to deny any and all exceptions taken to the RFP requirements.

The cost of preparing Proposals will be borne solely by the offerors. Proposals shall address all the questions posed by the Issuers in the order in which they appear in this request.

RFP Designated Contact:

Please submit all questions and requests for information to:

Cynthia L. Collins, Deputy Attorney General
Carvel State Building
820 N. French Street, 6th Floor
Wilmington, Delaware 19801
Direct Dial: (302) 577-8405
Fax: (302) 577-6630
Email: Cynthia.Collins@state.de.us

All questions submitted, along with answers will be consolidated into a single Q&A document. The source of the questions will not be disclosed in the document. The Q&A document will be posted on the Public Employment Relations Board's website at <http://perb.delaware.gov> and the Attorney General's website at <http://attorneygeneral.delaware.gov>.

1.0 GENERAL INFORMATION

1.01 Project Scope and Objectives

This RFP seeks to retain the services of Conflict Counsel. Conflict Counsel shall provide representation and litigation services to the PERB, concerning the motions filed by the Superior Court to challenge the PERB's authority to exercise jurisdiction over the Superior Court.

This matter involves Bailiffs and Peace Officers employed by Superior Court who are seeking representation by the United Food and Commercial Workers for purposes of collective bargaining. The Court has challenged PERB's jurisdiction to conduct the union certification election, on the premise that the separation of powers doctrine prohibits PERB (an executive branch agency) from exercising jurisdiction over the Court.

1.02 Reporting

Selected Conflict Counsel will work closely with the PERB.

2.0 MINIMUM REQUIRED QUALIFICATIONS

2.01 Experience and Reputation

- A. The law firm must have been in business at least five years.
- B. The law firm should have at least five (5) or more year's prior experience in representing states, or other governmental agencies in litigation before the Courts of Delaware.
- C. The law firm must designate a lead attorney licensed to practice law with five (5) or more years experience.
- D. The lead attorney should have experience in the field of labor law, including representation proceedings, as well as experience in statutory construction and constitutional law.

2.02 Professional Liability Insurance

The Vendor shall agree to maintain in full force and effect during the term of the Contract professional liability insurance in an aggregate amount of not less than \$2 million. In order to satisfy this requirement, the Vendor must:

- A. Include a statement in its Proposal affirmatively responding to this RFP; and

B. Include in its Proposal either:

- 1) A certificate of insurance or letter from its insurer demonstrating that the Vendor meets this requirement, or
- 2) A commitment letter or other evidence, satisfactory to the Procurement Officer, that Vendor will have such coverage as of the date the Contract commences.

If the Vendor is a joint venture, and one party of the joint venture does not presently have such liability insurance, this requirement may be satisfied if the members of the joint venture include in their proposal evidence, satisfactory to the Procurement Officer, that all members of the joint venture will have such coverage as of the date the Contract commences, either through actual insurance policies or an indemnity agreement by the properly insured firm, in form and substance acceptable to the State

2.03 Vendor's Capacity

Each Vendor must demonstrate the capacity to perform the type of services needed by the State described in Section 1.01 above. The Vendor must be available at all times to render services required under the Contract.

3.0 TECHNICAL PROPOSAL FORMAT

The following information shall be provided in each proposal in the order listed below. A Vendor is expected to provide a response for each requirement listed in this RFP. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of the PERB.

3.01 General

All technical proposals shall be prepared with a concise description of the Vendor's capabilities to satisfy the minimum qualifications of Section 2 above and the information requested under Section 3 below. Vendors should organize their proposals so that their responses correspond to the specific subsections to the extent possible without unnecessary repetition.

3.02 Required Information

The proposal shall contain the information described below. Joint ventures should provide the information separately for each firm.

A. Vendor's Prior Experience

1. General Information:

- (i) Within the past three years, have there been any significant developments in your firm such as changes in ownership or restructuring? Do you anticipate any significant changes in the future? Please describe.
- (ii) Has your firm or an attorney in your firm's employ even been disciplined or censured by any regulatory body? If so, describe the principal facts.
- (iii) Within the last five years, has your firm, or a partner or attorney in your firm, been involved in litigation or other legal proceedings relating to provision of legal services? If so, provide an explanation and indicate the current status or disposition.
- (iv) Please describe your firm's backup procedures in the event one or more attorneys assigned to State leave the firm. Identify the key attorney who will be the primary contact and lead counsel in providing services to State, whose continuing status as such is an essential element of this contract.

2. Governmental Experience:

- (i) Provide a list of representations of state entities in litigation matters related to disputes with other state entities during the last five (5) years;
- (ii) Provide a description of one of the representations listed above, detail the dispute between the parties;
- (iii) Provide a description of a representation of a governmental agency where a separation of powers or jurisdictional issue was litigated;
- (iv) Provide a brief description of your labor relations practice and describe any experience in representing entities during a labor organization effort; and
- (v) Provide a brief description of areas of the law related to the purpose of this RFP in which the Vendor has an expertise, including, but not limited to, administrative law, constitutional law and contract law.

B. Conflicts of Interest.

1. In general. If a conflict of interest arises, the Vendor should be willing to continue to represent the PERB and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. The Attorney General may entertain a request for a waiver of a Vendor's representation of a party in litigation involving a unit of State government other than the PERB, but does not expect to waive any other conflicts. The State reserves the right, in its sole discretion, to select another approved law firm to work on a particular matter if a conflict is not resolved to its satisfaction.

Each Vendor shall identify any conflicts of interest which may arise if the Vendor serves as Conflict Counsel. The Vendor shall describe in its Proposal how it proposes to deal with such conflicts. Conflicts may arise not only from attorneys names on the contract but also from representation of parties involved in the transactions or other matters involving the State by any member of the firm, regardless of whether that attorney is in the same office or a different office of the firm.

4.0 PRICE PROPOSAL FORMAT**4.01 Billing Rates**

- A. Current billing Rates for all attorneys assigned to represent the State pursuant to this RFP;
- B. Current billing Rates for all para-professionals assigned to represent the State pursuant to this RFP; and
- C. No compensation will be permitted for the services of law clerks and law school graduates not admitted to practice.

4.02 Alternative Pricing Proposals

Although each Vendor is required to submit a price proposal containing the information set forth in Part 4.0, the PERB will also accept proposals for alternative billing arrangements, which enhance the value and efficiency of the services to be provided. The Vendor may submit a statement, not more than one page in length, with respect to any alternative pricing proposal.

5.0 EVALUATION OF PROPOSALS

The selection committee shall evaluate the proposals. During the evaluation process the selection committee may, at its discretion, request any or all firms to make oral presentations or participate in a formal interview. Such presentation or interviews will provide firms with an opportunity to answer questions about a firm's Proposal. Not all firms may be asked to make an oral presentation or to attend an interview.

5.01 Selection Criteria

The selection of the firm to provide legal services will be based on an evaluation of the Proposals to determine which Proposal reflects the best value to the PERB, with technical factors generally being considered more important than cost of services. The selection of the firm to provide legal services will be based upon the following technical factors in descending order of importance.

- A. Experience of the firm and the individual attorneys representing governmental entities;
- B. Experience with or knowledge of the firm and individual attorneys representing governmental entities in disputes with other agencies involving jurisdictional, constitutional and separation of powers issues;
- C. Administrative structure of representation (i.e., proposed staffing assignments), soundness of approach to representation and understanding of the needs of the State;
- D. Demonstrated ability to perform the services referred to under Project Scope and Objectives; and
- E. References and recommendations of other clients.

5.02 Contract Negotiation

The PERB intends on opening negotiations with Vendors that the PERB determines have a reasonable likelihood of being awarded a contract based on the proposals that are submitted. Negotiations will focus on any technical weaknesses or deficiencies in proposals as well as cost and pricing issues.

A written contract with each of the selected law firms will be required. Each contract must be approved by the Attorney General of the State of Delaware and the Governor of the State of Delaware pursuant to 29 *Del. C.* § 2507

5.03 Contract Award

The PERB reserves the right to award all, part, or none of this contract. The PERB intends to award contracts to more than one law firm if deemed appropriate and desirable.